

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Alliance Companies) Docket Nos. EL02 -65-000 and
) RT01-88-016

**NOTICE OF INTERVENTION AND PROTEST
OF THE
The Indiana Utility Regulatory Commission,
The Michigan Public Service Commission,
And The Oklahoma Corporation Commission**

I. INTRODUCTION

The filing is in response to questions posed by the FERC regarding RTO configuration in the Midwest Region. Pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure, the Indiana Utility Regulatory Commission (IURC), the Michigan Public Service Commission (MPSC), and the Oklahoma Corporation Commission (OCC), (collectively referred to as the Midwestern States) protest and give notice of prior interventions in the above captioned dockets or alternatively request leave to intervene in this proceeding.

The Midwestern States respond herein, not only to address the broader public policy concerns attendant to RTO elections by certain former Alliance Companies but also to respond specifically to some of the questions posed by the Federal Energy Regulatory Commission (Commission) to the former "Alliance companies," ECAR, MAIN, PJM and the MISO on July 3, 2002.

Because of the urgent importance of the reliability and commercial issues in this matter, and despite the fact that some states have already filed individual comments, the Midwestern State commissions have multiple and strong concerns about the RTO membership decisions made by certain former Alliance companies in response to the Commission's April 25, 2002 Order on Petition for Declaratory Order in the above

captioned dockets. The Order required American Electric Power (AEP), Northern Indiana Public Service Company (NIPSCO), Commonwealth Edison (CE), Illinois Power (IP) et al to make a compliance filing within thirty (30) days of the April 25 Order. The compliance filing, among other things, directed the Alliance companies to declare which RTO or ISO they intended to join either collectively or individually by May 28, 2002. On May 28, 2002, each of the Alliance companies submitted separate filings to comply with the Commission's Order. Ameren, First Energy, and NIPSCO announced their intention to join the Midwest ISO (MISO). AEP, CE, IP, Dayton P&L and, most recently, Dominion declared their intent to join the PJM. In all cases, the Petitioners indicated their intention to join as individual companies or as part of an Independent Transmission Company (ITC).

The Midwestern States wish to make it clear that this is not a debate, and should not be, a debate about the MISO or the PJM. *The debate, rather, is about the very foundation of the Commission's RTO policy and the vision that it has articulated beginning in Order 888, as reiterated in Order 2000 and further refined in a series of orders beginning in the summer of 2001.* The Midwestern States understand the Commission's definition of RTO functions in Order 2000 to have four minimum characteristics: "Independence from market participants," "scope and regional configuration," "operational authority," and "short-term reliability." The Midwestern States have consistently supported the Commission's vision and urge the Commission to vigorously apply these criteria in this matter.

II. Decisions By AEP, Commonwealth Edison and Illinois Power are not in the Public Interest

Specifically, the Midwestern States have grave concerns about the decision of Commonwealth Edison, Illinois Power, and American Electric Power ¹ to join the PJM as being inconsistent with the broad public interest and the expressed RTO goals and requirements of the FERC. Before the decision by these former Alliance companies to join the PJM, the Midwestern States were concerned with the “doughnut effect,” now we are concerned with the “Swiss cheese” configuration that is also unpalatable.

With specific regard to AEP, we appreciate the Commission's recognition that AEP must obtain approvals by various state commissions, ² to better ensure that the public interest is satisfied. With regard to AEP, CE, and IP, we are concerned that the elections by these companies, if approved by the Commission, will result in a configuration that seems very likely to have adverse reliability and commercial consequences for both the MISO and the PJM and could result in friction between these two organizations that have, thus far, evidenced an extraordinary willingness to work together. While the decisions may be in the perceived best commercial interest of these former Alliance companies, that focus should be weighed against the detriment to other market participants, consumers, and the goal of well-designed “rational” and “natural” markets. Again, the Midwestern States are appreciative of the Commission's questions

¹ Any decision by American Electric Power Company, on behalf of its subsidiary Indiana Michigan Power Company (I&M), to join either the PJM or the MISO and transfer operational control or ownership of facilities to an RTO, will be subject to the approval of the Indiana Utility Regulatory Commission. As a result, the IURC does not take any position on AEP's decision at this time except to note that many of the questions posed by the Commission, since they are consistent with the fundamental rational and natural market concerns that could adversely affect reliability and commerce that were raised in the IURC's initial Order denying I&M the authority to join the Alliance RTO, are likely to be reviewed in the context of a state proceeding in this matter.

² “Provide a detailed list explaining all of the contingencies built into the AEP MOU with PJM including contingencies that are subject to the control of AEP and PJM as well as those which require approval by any Federal or state regulatory agencies. Fully explain the result of failure to meet any such contingencies.” -Commission's Questions

in this regard ³ and cannot imagine a compelling countervailing response will be forthcoming from the former Alliance companies.

The Midwest State Commissions, while recognizing that boundaries among RTOs are inevitable, have consistently urged the Commission to eliminate inter-RTO seams to the maximum extent possible – including reliability and commercial seams problems. This necessarily would include the elimination of inter-RTO seams caused by companies primarily engaged in the transmission business within one RTO's footprint that become a member of an RTO with a foreign footprint. Some of the differences will be significant (e.g., emergency procedures) while other differences may be more subtle (e.g., differences in definitions) though still significant in effect. Below are some examples of the types of reliability and commercial seams concerns that will need to be resolved.

A. Potential Adverse Reliability and Commercial Ramifications

The potential reliability concerns were well articulated by the PJM in addressing a proposal by National Grid. PJM's concerns about the division of responsibilities between RTOs and among various transmission owners and their respective RTOs are valid in the context of this case as well.

A key goal of the PJM/MISO joint and common market design is to ensure that, whether individual Alliance companies migrate separately to MISO or PJM, or join MISO or PJM as a block, a large seamless energy market across the MISO and PJM region must exist.⁴

³ “ Please address fully how the parties’ proposal to join PJM would be consistent with the regional configuration factors identified in Order No. 2000 at 31,082 –085 (e.g., making accurate and reliable ATC determinations; resolving loop flow issues; managing congestion; planning and coordinating expansion; encompassing one contiguous geographic area). How would this impact Midwest ISO RTO operations? Provide supporting information.” – Commission’s Questions.

⁴ MOTION TO INTERVENE AND PROTEST , OF PJM INTERCONNECTION, L.L.C., Docket No. EL02-65-000, Alliance Companies et al. and National Grid USA.

In the context of wholesale power markets, a seamless market equates to a more reliable market. Of similar significance, reliability and commerce are inextricably intertwined. In this regard, we urge the Commission to give careful consideration to comments from Dr. David Patton in this cause in a letter to Mr. Jim Torgerson, CEO of the MISO, dated July 10, 2002.

Most of the discussion of these elections have previously focused on their potential reliability effects rather than the market effects. However, the market issues related to the resulting RTO configuration are significant and will hopefully be considered by the Federal Energy Regulatory Commission ("FERC"). The configurations that result from the proposed elections create a highly irregular seam between PJM and the MISO, including the creation of non-contiguous areas within the MISO. This configuration raises two potential issues. The efficiency of the locational marginal prices ("LMP") and associated dispatch decisions, and the increased potential for strategic gaming.

The interrelationship between reliability and efficient commerce arose recently in a situation involving transmission service between entities in Minnesota and Wisconsin, where firm transmission service under the MISO tariff had to be curtailed and these entities were compelled to purchase transmission service from Commonwealth Edison. This situation is not an isolated occurrence and demonstrates the interrelationship between reliability and commerce. If Commonwealth Edison is allowed to join the PJM without any other accommodations, the parties to this transaction would be forced to pay a "pancaked" tariff for "through and out" transactions that both source and sink within the MISO footprint – a charge that would not occur if CE were a member of the MISO. Similar results would occur if Public Service Company of Oklahoma (an AEP subsidiary) were to attempt RTO membership in the PJM or in the eventual Southeastern RTO rather than the MISO. The goal of "one stop shopping" for the MISO, PJM and any other applicable RTO would then be in jeopardy. Reliability of service to firm load could also be at issue if there are differences of opinion between the MISO, the PJM, or SE Trans that result in firm transmission service through Commonwealth Edison or Public Service of Oklahoma being subsequently denied.

Certainly, the Commission has long recognized that loop flow should, to the extent possible, be internalized within an RTO. In the near-term, the geographic configuration (Swiss cheese effect) makes it virtually inevitable that there will be problems between the MISO and the PJM (or other RTO) associated with compensation for losses as well as honoring flow-gate obligations in each RTO to avoid overload situations. Aside from the inherent geographic concerns, the inevitability of problems arising between the PJM and the MISO is due to the fact that the MISO “tags” transactions and the PJM does not tag transactions internal to the PJM so there is no ability to trace all of the transactions that cause overloads or to mitigate those overloads. This example is just one of many coordination issues that seem destined to be a continual source of complexity and potential friction between the PJM and the MISO. Obviously, the decisions by CE, IP and AEP could, almost certainly, be detrimental to the efficient and reliable management of loop flow problems and to the evolution of Midwest markets.

Security Coordination by PJM in the Commonwealth Edison and Illinois Power territories could also be extremely difficult to implement in the normal course of operations. The problem is made worse as a result of geographic configuration because there is an increased potential for the PJM and the MISO to issue conflicting orders for Security Coordination. Such conflicts could have severe effects on regional reliability and, like problems of parallel flows, could be a continual and unnecessary source of complexity and potential friction between the PJM and the MISO—especially in the near term, where there is a heightened potential for increased Transmission Loading Relief (TLRs) as a result of coordination difficulties between the PJM and the MISO that would not be necessary *but for* the decision of these former Alliance companies to join the PJM.

Because of the intrinsic relationships among utilities in this region, planning would also be impaired by the configurations proposed by these former Alliance companies. The level of cooperation that would be required for PJM to plan within the MISO area adds a degree of complexity for both the PJM and the MISO that is wholly unwarranted and could pose reliability and commercial risks. The addition of a move by AEP to place Public Service Company of Oklahoma in the PJM or the eventual SE Trans, serves only to magnify these risks.

The Midwestern State Commissions, therefore, contend that the commercial ramifications associated with the decision of certain Alliance companies to join the MISO, the PJM, or any other future RTO, could include severe impediments to the efficiency of the markets in the Midwest prior to achieving a single market design, and also later if there is not uniform rate treatment across the combined footprints. Certainly an obvious commercial concern is the creation of unnecessary and routine pancaking of rates. Any MISO participant that wants to conduct transactions through a "foreign" RTO system (outside of their natural markets), for instance, would be forced to pay a pancaked rate that would not be necessary *but for* that utility's decision to join the foreign RTO. In the instances of Commonwealth Edison and/or Public Service Company of Oklahoma, pancaked rates would be inevitable due to the volume of trades that would be carried out with MISO members. It is difficult to identify a legitimate analysis that would show that pancaking of rates is not a serious detriment to both the utilities that were to join a foreign RTO and to the Midwest markets generally.

Compensation for losses, resulting from parallel path flows between the two RTOs, provides another illustration of commercial ramifications that must be addressed. The failure to adequately compensate the affected RTO will foster tension between the RTOs and member transmission owners.

Another example of a commercial (and reliability) implication that needs to be resolved is the operation of generating units that are jointly owned by utilities that participate in different RTOs. Cinergy and AEP, for instance, have joint ownership of certain facilities. A directive by one RTO to move the generator up (or down) could be in conflict with the directives of the other RTO. Even if the RTOs were to resolve the operational dispute, there would still be a matter of providing compensation. Because joint ownership is not uncommon within the ECAR, MAIN, and SPP regions, this factor should be considered in the Commission's determination of "natural" and "rational" markets.

In addition to fair compensation to one RTO affected by the actions of another RTO, even slight tariff differences between the two involved RTOs may ultimately prove to be very important and the differences could result in discriminatory practices and disputes. The June 26, 2002 presentation by Illinois Power, for instance, asserts that the PJM market design supports retail access and intimates that the MISO does not. While we do not agree with the assertion by Illinois Power, the Midwestern States have faith that the Commission will give this concern, and the broader issues of undue discrimination, careful consideration and will remove the undue differential rate incentives that seem to be driving RTO choices. This, unfortunately, seems to be the most critical issue driving the configuration apparently being fostered by the former Alliance Companies.

Our concerns go even deeper. The Midwest States believe that even after the Standard Market Design is in place, reliability concerns will still exist as a result of the Swiss cheese approach to RTO formation. This concern accepts PJM's logic in its filing concerning "functional splits" that the design itself cannot work with two entities in charge without creating chaos.

B. The Configuration Proposed by the Former Alliance Companies Do Not Comport With Natural Markets

Contrary to the representations made by AEP, CE, and IP, the Midwestern States do not believe that these companies have demonstrated that their “natural” and “rational” markets are in the PJM rather than the MISO. The “evidence” offered by these companies does not support their conclusion. Rather, except in extreme conditions for very few hours (the CE graph entitled “Where Did ComEd’s Imports Come From I n An Emergency” showed one hour, on one day in 1998), their principal trading patterns are among themselves, with entities that are now members of the MISO, and the TVA – *not* PJM. Moreover, a finding that these companies’ natural markets are in the PJM wo uld have a disruptive effect on other entities within the Midwest natural markets. In contrast to the assertion offered by these former Alliance companies, we believe the natural and historical markets might be better defined by these companies’ historic decisions to be members of the MAIN, the ECAR, or the SPP. ⁵

Even where the decision to enter an RTO is voluntary in the first instance, the Commission is empowered, indeed obligated, to ensure that the resulting RTO arrangement is just and reasonable and not unduly discriminatory under Sections 205 and 206 of the FPA. *See, e.g., Central Iowa Power Cooperative v. FERC*, 606 F.2d 1156, 1163 (D.C. Cir. 1979). Where the absence of a provision or service would render

⁵ The evidence offered by Commonwealth Edison and Illinois Power, in their June 26, 2002 comments to the FERC, does not support their argument that their historical trading patterns warrant membership in the PJM. For both, their argument loses all credibility if AEP is a member of the MISO. Even if FERC approves AEP’s decision to join the PJM, only 17% of Illinois Power’s imports would come from PJM – due exclusively to AEP’s membership in the PJM. Similarly, ComEd’s contention suffers from a similar misinterpretation of its own evidence. If AEP and IP were not allowed to join the PJM, none of their historic imports would come from PJM. In sum, the “natural markets” for Commonwealth Edison and Illinois Power are within the MAIN and ECAR regions – not the PJM.

The potential that Commonwealth Edison and Illinois Power (and perhaps AEP) may be considering changing their reliability council affiliations does not change the fact that their historic participation in these councils was indicative of the “natural markets.” The Midwest State Commissions are concerned about any potential reliability ramifications.

the agreement unreasonable, FERC has the authority to modify the agreement by adding provisions or services. *Id.* (holding that while the decision to form a power pool is voluntary, once the power pool is formed, it must operate on terms and conditions that are just, reasonable and not unduly discriminatory).

The expeditious adoption of standardized market rules and consistent operational practices between RTOs in the regions served by the PJM and the MISO should accommodate any changes in trading patterns these companies may wish to pursue in the future. As the Commission's question to IP and CE anticipated, CE and IP would, as a result of their decision to join the PJM, be isolated from their historical markets as shown in their respective power point presentations to the Commission on June 26, 2002. The same isolation would also occur were Public Service Company of Oklahoma to attempt to join PJM or SETrans. Because CE, IP, and PSO are historically integral to the Midwest markets, this isolation will be disruptive to the Midwest markets and as well to the utilities themselves.

C. Continuing Uncertainties

The decisions by individual Alliance companies may be just the latest chapter in a difficult and protracted period that has caused considerable uncertainty in the Midwest markets and contributed to the cost of RTO formation. The added uncertainty and costs impose unnecessary expenses on all customers in this region and, we fear, has diminished confidence in efforts to develop competitive wholesale power markets. We hoped that the Commission's Order requiring the Alliance companies to choose either the MISO or the PJM would have produced a quick and final resolution to the RTO membership and configuration issues. Now our collective concern is that resolution

appear to be slowed by the decisions of some of the companies that are still subject to negotiation.⁶

A more rapid inclusion in the PJM on an operational basis was the alleged basis for negotiations and the decision of certain Alliance companies to join the PJM. However, the claim of certain Alliance companies⁷ that the start-up time would be less if they joined the PJM rather than the MISO are not consistent with recent statements by representatives of the PJM or the MISO. According to a PJM representative at the MISO – PJM – SP P Single Market Design Forum on Thursday July 11, 2002, Commonwealth Edison and Illinois Power won't be fully incorporated into the PJM until Spring 2004. Thus the difference in timing with joining the MISO versus the PJM does not appear to be significant. At a minimum, these ongoing negotiations promise further delay and impose a cost on market participants and consumers that is unconscionable.

Even if negotiations were completed tomorrow, the Midwestern States are concerned that any negotiated settlement might compromise the efforts to move to a standard market design based on best practices. By definition, negotiations suggest "compromise" and to the extent that the negotiations "water down" the current RTOs' market design, or operational protocols, or create seams among RTOs, the Midwestern States are concerned that there could be wide-ranging adverse reliability and

⁶ A memo from AEP to State Commissions dated July 1, 2002 describes the ongoing and potentially protracted negotiations.

"Several of the AEP East state Commissioners and Staff have expressed interest in ongoing feedback regarding the AEP effort to join/integrate ourselves into the PJM RTO. Several discussions and/or visits with individual states have been/will be made by Craig Bakertop provides such feedback, but it would be difficult to provide enough feedback to our states with this one-on-one process going forward. Craig has established a standing conference call time and code where by state Commissioners and/or their Staffs can call into to hear a progress report from Craig. The interval between calls will be three weeks, and the first such call will be on July 26...."

⁷ Presentations by Commonwealth Edison and Illinois Power to the FERC dated June 26, 2002. Illinois Power, for instance, asserted that they would be able to fully participate in PJM's LMP market by the end of 2003.

commercial implications. These concerns are amplified by the lack of stakeholder involvement and the fact that these companies did not simply join PJM and adopt their existing rules. Our conclusion is that changes are currently being negotiated, even to the point of creating a "third" derivative of PJM. Notwithstanding efforts to bring certainty to the Midwest through orders of the Commission,⁸ the IURC's Order denying AEP's and NIPSCO's petitions to join the Alliance RTO,⁹ and a recent show-cause Order by the Michigan PSC,¹⁰ no certainty has been achieved. The issue as to whether Alliance companies would join either the MISO or the PJM still remains unresolved and the Midwestern States are concerned that the Appeals of the aforementioned Orders and the on-going negotiations by a few former Alliance companies will create continued delay rather than resolve the matter once and for all.

III. Deference Should Be Accorded to the Advisory Processes

⁸ On December 20, 2001, the Commission issued an order finding that the Midwest ISO's regional transmission organization ("RTO") proposal more fully complied with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope. Therefore, the Commission granted the Midwest ISO RTO status, and stated that the Midwest ISO should serve as the foundation upon which a Midwest RTO should be built. *Midwest Independent Transmission System Operator, Inc.*, 97 FERC at ¶ 61,326, slip op. at 2. On December 20, 2001, the Commission also concluded that the Alliance Companies, which had filed for approval as a separate RTO, lacked sufficient scope to exist as a stand-alone RTO. This decision was based in part upon performance in implementing the Inter-RTO Cooperation Agreement (IRCA), which was intended to provide the basis for a seamless market in the territories served by the Midwest ISO and the Alliance RTO. The Commission found that the expectation that the IRCA would provide the necessary coordination and agreement did not materialize through actual performance.

The Commission directed the Alliance Companies to explore other opportunities for RTO participation, including options to participate in an independent transmission company within the Midwest ISO, e.g., via Appendix I. The Commission also directed the Alliance Companies to file a statement of their plans to join an RTO, including the timeframe, within 60 days of the date of that order. *Alliance V* Order, 97 FERC at ¶ 61,327, slip op. at 17.

⁹ On December 17, 2001, the Indiana Utility Regulatory Commission issued an Order in Cause Nos. 42032 and 42027 (consolidated) denying transfer of functional control and operation of Indiana Michigan Power Company's, d/b/a/ American Electric Power and Northern Indiana Public Service Company's transmission facilities to the Alliance Regional Transmission Organization.

¹⁰ On April 16, 2002 in Cause U-13360, the Michigan Public Service Commission issued a show-cause Order to inquire into the status of Indiana Michigan Power Company's compliance with Section 10 of 2000 PA 141.

The Midwestern States have considerable experience with the Advisory Committee process of the MISO and have been generally pleased with the degree of openness, the access to the MISO management and Board of Directors, and the willingness of the Board and management to accept input from all stakeholders – including state commissions.¹¹ Notwithstanding our confidence in the MISO's management, Board and Advisory process, the Midwestern States urge the Commission to assure that the former Alliance companies, which indicated a willingness to join the MISO, do so under terms and conditions that are consistent with the terms forged with other members of the MISO. In an effort to further avoid undue discrimination among MISO members and to better ensure efficient commerce and reliability, the terms and conditions of membership in the MISO should be non-discriminatory and should be subject to changes that emanate from the Commission's "Standardized Market Design" Rulemaking and any other evolutionary changes promulgated by the FERC. We trust that the Commission will give due regard to any concerns raised by existing members of the MISO that new members are accorded undue preference.

Because the PJM is an established platform, we have confidence that, if fully informed, stakeholders in the PJM will not be amenable to accepting a negotiated settlement with the former Alliance companies that would compromise the integrity of their system by allowing PJM West or PJM South (or other directions) to imperil the core practices and operations of PJM. Our concern is heightened, however, by the fact that these former Alliance companies have not yet joined the PJM but, rather, are still negotiating some, as of yet unspecified, changes to the PJM agreements. As with the MISO's Advisory process, we urge the Commission to give due consideration to any concerns raised by members of the PJM Advisory Committee that the negotiations with

¹¹ In this regard, we take exception to the unsupported statements made by Illinois Power in its comments to the FERC dated June 26, 2002, suggesting that the MISO's stakeholder process was inefficient. This type of assertion does not advance the debate on legitimate concerns.

former Alliance companies are either committed to promising the market design of the PJM or are unduly preferential.

IV. Specific Recommendations

To better ensure the proper development of RTOs, the Midwestern States request that the Commission prevent a “hop scotch” (Swiss cheese) pattern from developing in the PJM, the MISO, and any future RTOs by requiring compelling showings to justify utilities not joining RTOs that are most consistent with the reliability and commercial imperatives in their natural and historic markets.

The Midwestern States now believe that the time has come for the FERC to use all available tools to ensure immediate and unequivocal compliance. The tools that the Commission should use include, but are not limited to: withholding approvals for any transmission-owning utility that desires Commission approval for corporate restructuring; denial of certification for market-based rate authority to take advantage of competitive markets; and the Commission’s authority to prevent undue discrimination.¹² The Commission has broad authority to remedy undue discrimination, *New York v. FERC*, 122 S.Ct. 1012 (2002).

Consistent with our support for assertive action by the Commission, the Midwestern States are concerned that the patchwork boundaries that may result from RTO elections that do not follow natural markets will result in inadequate interstate service. Accordingly, we urge the Commission, pursuant to the authority granted state commissions under Section 207 of the FPA to take action to ensure adequate interstate service by ordering, if necessary, that transmission owning utilities join specific RTOs to

¹²The Midwest State Commissions recognize that it is Commission policy not to address a request for 206 relief except in the context of a separately filed complaint. Here, however, the Midwestern State Commissions have merely asked the Commission to consider whether to initiate such a proceeding on its own motion.

advance natural markets and to set the boundaries of RTOs.¹³ Despite a recent ruling to the contrary, once the membership and boundaries are set, the Midwestern States believe that the Commissions should not permit individual transmission-owning utilities to move to other RTOs without a clear and compelling demonstration that the public interest is served by that move.¹⁴ Because of the disruptive ramifications for the markets and the affected RTOs, it is difficult to imagine a scenario that is so extreme as to warrant continued “musical chairs” in the Midwest. Even if there were extreme conditions that provided an arguably compelling financial reason for a transmission-owning utility to leave one RTO in favor of another, the FERC should require such transmission-owning utilities to demonstrate that customers and market participants receive significant and quantifiable short and long-term benefits. RTOs that lose transmission-owning utilities should be fully compensated and there should be no seams issues as a consequence of their change in RTO affiliation. Finally, to ensure the long-term stability of RTO membership and discourage disruptive inter-RTO migrations, the FERC should employ any available authorities to prevent any migration that is counter to good public policy.

V. Avoid Undue Expectations for National Grid to Mitigate Seams Issues

The Midwestern States note that there are negotiations ongoing among all the former Alliance companies and National Grid. We agree with National Grid’s comments

¹³ *Atlantic City Electric Co., ET AL., v. FERC*, Docket No. 97-1097, 2002 U.S. App. Lexis 14021 (D.C. Cir., July 12, 2002).

¹⁴ Midwest State Commissions recognize that the opinion issued by the D.C. Circuit last Friday held that the Commission had no power to require transmission-owning entities to seek Section 203 approval before leaving a particular ISO. *Atlantic City Electric Company v. FERC*, No. 97-1097 (D.C. Cir. July 12, 2002). The court, however, also noted that the Commission had power to review ISO agreements under Sections 205 and 206 to determine whether the departure of an RTO member would be reasonable. *Id.* (“This does not mean that FERC is prohibited from reviewing entry or exit from an ISO. The petitioners are not disputing FERC’s authority to review their arrangements at the outset and to decide, based on the evidence in the record, whether the entrance and exit rights specified therein are just and reasonable within the meaning of Section 205. Nor do the petitioners contest FERC’s authority to review as specific withdrawal under Section 205”).

(June 26) that “mixing current Midwest and PJM ‘market designs’ is a bad idea.” We also agree with National Grid that if the FERC “accepts ‘marbled cheese’ AEP, IP, CE, and DP&L should implement Midwest (ISO) arrangements... until SMD [standardized market design] is introduced.”

We believe it would be untenable for National Grid to operate in both the PJM and the MISO until there is full compatibility in practices and market design between the PJM and the MISO. Because the current differences between the MISO and the PJM involve market design and operational issues that are outside the scope of authorities for an ITC to handle, consistent with the “Translink” functional split allocation, it would be unreasonable to expect National Grid to be the “glue” that holds the PJM and the MISO together. The Midwestern States believe the Commission may conclude, as a result of the Standardized Market Design rulemaking, that one or more of the functions that the Commission initially felt might be appropriate for an ITC to conduct, such as planning, would be inconsistent with the cohesive operations of an RTO. While the Midwestern states have respect for National Grid’s credentials, we would call the Commission’s attention to its previously expressed conditional approval of National Grid’s proposal to be the Managing Member of the Alliance RTO. The Commission’s approval, as we understand it, was predicated on the belief that National Grid was not a market participant in the MISO markets. While arguably that may have been true in the National Grids’ proposal to operate under the MISO, it may not be true in the PJM. For all of these reasons, we believe it would be unfair to expect National Grid (or any ITC) to be the tie between the PJM and the MISO or any other ISO or RTOs.

VI. Summation

The Midwestern states in summation, oppose the election of Commonwealth Edison, Illinois Power, and AEP to join the PJM in particular – or any other future FERC approved RTO that does not fall within the natural market of the applicable utility as

contrary to the public interest and disruptive to the natural operation of Midwest electricity markets. Contorted market configurations will lead to discriminatory access and rates for all market sectors. Therefore, we urge the Commission to take action under Section 207 to ensure adequate interstate service and to make use of any other authorities it has to ensure the viability of the Midwest markets. We urge the Commission, with regard to all former Alliance companies, whether they join the MISO, the PJM, or any other functioning RTO, to be exacting in their expectations for the integrity and the reliability of the Midwestern markets and to take decisive action to achieve the desired ends for RTOs – as expressed in all of the Commission's orders to date; including but not limited to Orders 888 and 2000.

Respectfully submitted

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